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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/524,920

12/21/2005

Yoshitsugu Morita

71,051-002

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27305

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08/10/2010

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EXAMINER

KASSA, TIGABU

ART UNIT

PAPER NUMBER

1619

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Interview Summary</b>	<b>Application No.</b> 10/524,920	<b>Applicant(s)</b> MORITA ET AL.	
	<b>Examiner</b> TIGABU KASSA	<b>Art Unit</b> 1619	

All participants (applicant, applicant's representative, PTO personnel):

(1) 54TIGABU KASSA. (3) David M LaPrairie.

(2) Cherie M. Woodward. (4) Wyatt Istvan-Mitchell.

Date of Interview: 29 October 2010.

Type: a) ☒ Telephonic b) ☐ Video Conference  
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.  
If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: All pending, particularly Claims 1 and 2.

Identification of prior art discussed: Of record, particularly Kobayashi et al. (US Patent No. 5928660).

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

/Cherie M. Woodward/ Primary Examiner, Art Unit 1647	/TK/ 7/30/10
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## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

#### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

#### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant's representatives argued that the limitation of instant claim 1 wherein the non-crosslinkable oil contains the cross-linked silicone particles is not taught by Kobayashi et al. This was exemplified by the drawing submitted by Applicant in their Interview Agenda (see attached). The examiners disagreed with the assertions of Applicant's representatives by directing applicants to the teachings of Kobayashi et al. in practical examples 7, 1, and claims 1 and 6. The main issue discussed related to whether Kobayashi teaches embodiments comprising oil external to the silicone particles as well as internal to the silicone particles. In practical example 1, an aqueous emulsion of silicone rubber composition was prepared which in turn is used to make an aqueous suspension of a powdered silicone rubber composition. It further teaches this aqueous suspension of a powdered silicone composition is mixed with a composition that contains polyether modified silicone oil in practical example 7. The examiners also pointed out to Applicant's Representatives that the inclusion of the non-crosslinkable oil in the cross-linked silicone particles required a separate step in practical example 1. This teaching strengthens the examiners position that even though Kobayashi et al. is silent in practical example 7 as to whether the polyether modified silicone oil is on the outside or in the inside of the cross-linked silicone particles it is clear that in practical example 7 the specific steps recited in practical example 1, to incorporate the non-crosslinkable oil into the cross-linked silicone particles, are not performed. This is an implicit indication that the polyether modified silicone oil would most likely be on the outside of the cross-linked silicone particles or alternatively that it would be both on the outside and the inside of the silicone particles. The examiners also pointed out that the use of the term "contains" in instant claim 1 is read as the "open language" of "comprising" (see MPEP 2111.03) and does not exclude other agents either on the outside or in the inside of the cross-linked silicone particles. The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See, e.g., *Mars Inc. v. H.J. Heinz Co.*, 377 F.3d 1369, 1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004). Additionally, the examiners also directed Applicant's Representatives to further evidence that the cross-linked silicone particles are covered externally by oils or silicone oils from the teachings of Kobayashi et al. in claim 6, which recites "a cosmetic comprising a composition manufactured by (I) mixing:

(A) an aqueous suspension of a powdered silicone rubber with a mean particle size of 0.1 to 500 microns, the aqueous suspension of powdered silicone rubber being obtained by curing a silicon rubber composition dispersed in water in the form of fine particles, the powdered silicone rubber containing a non-cross-linked oil, and the surface of the powdered silicone rubber being covered by a fine inorganic powder; and

(B) a cosmetic material selected from the group consisting of fats, oils, waxes, hydrocarbons, higher fatty acids, alcohols, sterols, fatty acid esters, moisture retaining agents, surfactants, pigments, silicone oils, thickeners, ultraviolet absorbing agents, antibacterial agents, anti-inflammatory agents, antiperspirant agents, preservatives, fragrances, oxidation inhibitors, pH adjusting agents, and spray agents; and (II) removing moisture from the composition during manufacture of the cosmetic."

The use of the word "and" between parts (A) and (B) and the specific recitation of part (A), which teaches oils contained inside of silicone particles in an aqueous solution AND the recitation of part (B), which teaches oils separate and apart from the silicone particles containing oils, provides sufficient evidence of multiple embodiments in Kobayashi and at least one embodiment therein supports the examiner's position, as provided of record.

The attention of Applicant's representatives was also directed to the fact that both Kobayashi and the instant claims and specification teach these compositions as emulsions. Emulsions, by plain definition, are aqueous mixtures containing oils.

The examiners also noted that the limitation of instant claim 2 appears to be at odd with what is claimed in claim 1, at least insofar as Applicant is arguing against the Kobayashi reference and claim 2, which is dependent on claim 1, recites that the non-crosslinkable oil contains the cross-linked silicone particles in claim 1 and that the cross-linked silicone particles contain non-crosslinkable oil in claim 2..

The examiners also reminded Applicant's representatives that the prior art has been considered as a whole.

Applicant's representatives stated that they would consult with Applicant and may provide a declaration from co-inventor Kobayashi, if deemed necessary, because co-inventor Kobayashi is the same Kobayashi of the '660 patent and a co-inventor in the instant application. The examiners look forward to Applicant's response.